IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 18TH DECEMBER 2006 / 27TH AGRAHAYANA 1928

Crl.MC.No. 4061 of 2006()

L.P.C.NO.132/06 , CC.542/2006 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD (CRIME NO.13/05 OF KASARAGOD POLICE STATION SPLITUP FROM C.C.NO.131/2005.)

.....

PETITIONER: ACCUSED

ABDUL KADER, S/O.CHARALIL MOHAMMED,
CHARALIL HOUSE, CHATTAMCHAL, THEKKIL VILLAGE,
KASARGOD.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS:

---

1. THE STATE OF KERALA, REPRESENTED BY
STATION HOUSE OFFICER, KASARGOD POLICE,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

2. SUHARABI.M., D/O.ABDUL RAHIMAN,
NEAR THEKKIL PARAMBA U.P.SCHOOL,
CHATTANCHAL, KASARGOD.

BY ADV. SRI.MUHAMMED SALAHUDEEN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 4061 OF 2006

Dated this the 18th day of December, 2006

ORDER

The petitioner is the accused against whom his sister-in-law i.e., the 2nd respondent herein had filed a complaint under Sec.498A of the IPC before the learned Magistrate. The same was referred to the police. A crime under Sec.498A of the IPC was registered. After investigation, the police had filed a final report against the two accused persons including the petitioner herein. The petitioner's wife was the co-accused. The husband of the 2nd respondent was not arrayed as an accused as he was out of India. The petitioner was also employed abroad. After investigation, final report was filed by the police. Cognizance was taken by the learned Magistrate. As the petitioner was not available, the trial against the co-accused i.e., the wife of the petitioner alone continued. By Annexure-A6 judgment, that prosecution ended in acquittal. Inasmuch as the petitioner was not available for trial, the case against him was split up and it now remains in the list of Long Pending Cases.

2. The petitioner has now come to this Court with a prayer that the proceedings against the petitioner may be quashed by invoking the jurisdiction of this Court under Sec.482 of the Cr.P.C. The 2nd respondent – the sister-in-law of the petitioner, has also entered appearance through counsel and the 2nd respondent also joins the prayer that the proceedings now surviving against the petitioner herein may be quashed. All the disputes between the parties have been settled. The spouses are now living together harmoniously. The pendency of this proceedings is working out unnecessary prejudice and hardship in the relationship between the parties. This is a fit case where the powers under Sec.482 of the Cr.P.C. can and ought to be invoked in favour of the petitioner, even tough the offence under Sec.498A of the IPC for which the petitioner is charge sheeted is not compoundable. Considering the totality of the circumstances, a lenient and indulgent view can be taken and this prosecution may be put to a premature end saving the petitioner of unnecessary difficulties, inconvenience and prejudice.

3. The decision in **B.S. Joshy v. State of Haryana** (AIR 2003 SC 1386) is certainly authority for the proposition that in a fit and proper case, though the offence is not compoundable in terms of the provisions of Sec.320 of the Cr.P.C., powers under Sec.482 of the Cr.P.C. can be invoked in the interests of justice. The rationale underlying the decision is certainly that the interests of justice may in a proper case transcend the interests of mere law. Here is a case where, though the offences for which the charge sheet has been filed are different, the allegation was one of matrimonial cruelty punishable under Sec.498A of the IPC. The matter has been settled between the parties. The 2nd respondent/complainant has compounded all the offences alleged. I am satisfied, in these circumstances, that the composition can be taken into consideration and the proceedings against the petitioner can also be quashed.

4. In the result:

(a) This Crl.M.C. is allowed.

(b) C.C.No.542/06 which now stands transferred to the List of Land Pending Cases in LPC No.132/06 pending before the

Chief Judicial Magistrate, Kasaragod, against the petitioner herein is hereby quashed.

(c) Proceedings, if any, against the sureties must certainly be disposed of by passing appropriate orders by the learned Magistrate.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge